

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE	§	CASE NO: 00-CV-00005-DT
	§	
DOW CORNING CORPORATION,	§	(Settlement Facility Matters)
	§	
Reorganized Debtor	§	
	§	Hon. Denise Page Hood

**FINANCE COMMITTEE’S RESPONSE TO YEON HO KIM’S CROSS
MOTION FOR ENTRY OF AN ORDER TO SHOW CAUSE WITH
RESPECT TO THE FINANCE COMMITTEE**

The Finance Committee files this Response to Yeon Ho Kim’s Cross Motion for Entry of An Order to Show Cause, and respectfully shows the following:

1. Mr. Kim now uses a motion for entry of a show cause order to contend that the Finance Committee should to be required to pay five million dollars based on a mediated settlement agreement with him. Mr. Kim has made the identical contention in his Motion for Recognition and Enforcement of Mediation (Doc. No. #1271), which was filed on December 14, 2016, and is currently pending before the Court.

2. The Finance Committee opposed the Motion for Recognition and Enforcement of the Mediation and filed a Response on December 28, 2016. (Doc. No. 1274). The Claimant’s Advisory Committee (“CAC”) and Dow Corning Corporation and the Debtor’s Representatives (“DCC/DR”) also filed a joint opposition to Mr. Kim’s motion on December 28, 2016. (Doc. No. 1275).

3. Mr. Kim's Cross Motion for Entry of An Order to Show Cause is meritless and should be denied for all of the reasons provided in the Finance Committee's opposition to his original Motion for Recognition and Enforcement of the Mediation; as well as the reasons provided in the joint opposition of the CAC and DCC/DR. *See* Doc. Nos. 1274, 1275. Those reasons include:

- Mr. Kim is seeking to enforce an *unsigned draft* document that was never approved or executed by the Finance Committee. It is well established that a mediation that does not result in a full agreement and an executed document cannot be enforced. *Behrend v. Comcast Corp.*, No. CIV. A. 03-6604, 2012 WL 445982, at *6-7 (E.D. Pa. Sept. 25, 2012). *See also, Bonnette v. Long Is. Coll Hosp.*, 819 N.E.2d 206, 208-09 (N.Y. 2004) (“[T]o be enforceable under CPLR 2104, an out-of-court settlement must be adequately described in a signed writing.”).
- The Plan of Reorganization does not provide for group settlements; it requires individual evaluation of each claim pursuant to the criteria set forth in the Plan, therefore the settlement Mr. Kim seeks to enforce cannot be achieved absent a plan modification.
- Nearly all claims made by Korean Claimants have been processed and paid. Enforcement of the unsigned mediation agreement would result

in double payment to those individuals, which contradicts the Plan of Reorganization.

4. Based on the foregoing, the Finance Committee respectfully requests the Court deny Yeon Ho Kim's Cross Motion for Entry of an Order to Show Cause with Respect to the Finance Committee.

Dated: January 26, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2018, the foregoing pleading has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case.

By: /s/ Karima G. Maloney
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